

ORDER NO. 1509

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Express Mail & Priority Mail
Express Mail & Priority Mail Contract 11

Docket No. MC2013-1

Competitive Product Prices
Express Mail & Priority Mail Contract 11 (MC2013-1)
Negotiated Service Agreement

Docket No. CP2013-1

ORDER ADDING EXPRESS MAIL & PRIORITY MAIL CONTRACT 11
TO THE COMPETITIVE PRODUCT LIST

(Issued October 22, 2012)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 11 to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 11 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 10, 2012 (Request).

II. BACKGROUND

On October 10, 2012, in accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Express Mail & Priority Mail Contract 11 is a competitive product, and one that is “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. 3633(a), a copy of Governors’ Decision No. 11-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On October 11, 2012, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1492, Notice and Order Concerning Addition of Express Mail & Priority Mail Contract 11 to the Competitive Product List, October 11, 2012.

III. COMMENTS

The Public Representative filed comments on October 18, 2012.⁵ No other interested person submitted comments. The Public Representative states that she has reviewed all public and non-public materials submitted by the Postal Service in these dockets. *Id.* at 1. She argues that it is unclear if the Negotiated Service Agreement (NSA) will comport with the requirements of 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *Id.* at 2. She asserts that the Postal Service's supporting financial workpapers do not address the financial effects that contract term I.F. may have on the overall contract. *Id.* In light of this, the Public Representative recommends that the Postal Service supplement its filing with financial data that takes into account the financial effect of contract term I.F. to ensure that the contract will meet the requirements of 39 U.S.C. 3633(a). *Id.*

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the instant contract, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request entail assigning Express Mail & Priority Mail Contract 11 to either the market dominant or competitive product list. See 39 U.S.C. 3642(b)(1); 39 CFR 3020.32(d)-(e). In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.32(f), (g), and (h).

The Postal Service asserts that it provides Express Mail & Priority Mail service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease

⁵ Public Representative Comments, October 18, 2012 (PR Comments).

service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

Having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that Express Mail & Priority Mail Contract 11 is appropriately classified as competitive and added to the competitive product list.

Cost considerations. Because Express Mail & Priority Mail Contract 11 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. 3633(a); 39 CFR 3015.5.

The Postal Service has submitted a certified statement, along with supporting revenue and cost data, in an attempt to demonstrate that the contract meets the applicable statutory and regulatory requirements. The Public Representative argues that the Postal Service's supporting data do not take into account the financial effects of contract term I.F. PR Comments at 2. Without this information, the Public Representative asserts, a determination cannot be made as to whether the contract comports with the requirements of 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *Id.*

In filings involving competitive products, the Postal Service should provide supporting data that takes into account the financial impact of all contracts terms—including contract term I.F—on the ability of the entire contract to cover its attributable costs. Such information is required by the Commission's rules for the Commission to ensure that the contract meets the requirements of 39 U.S.C. 3633(a) and 39 CFR part 3015. See 39 CFR 3015.5(c); see *also* 39 CFR 3020.32(i). In future cases, the Postal

Service should file supporting data and financial analysis for NSAs that take into account all of the contract's terms.

In this case, the Commission was able to evaluate the financial effects of contract term I.F. using data from the Postal Service's 2011 Annual Compliance Report. The Commission's analysis of the entire contract's ability to meet the applicable statutory and regulatory requirements is provided in Library Reference PRC-LR-CP2013-1/NP1 which, will be filed under seal.

Based on that analysis, the Commission finds that Express Mail & Priority Mail Contract 11 complies with the provisions applicable to rates for competitive products.

Other considerations. By its terms, the contract becomes effective on the first business day after the date that the Commission issues all necessary regulatory approvals. Request, Attachment B at 11. It expires 3 years from the effective date unless, among other things, either party terminates the agreement with 30 days' written notice to the other party. *Id.*

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 11 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Express Mail & Priority Mail Contract 11 (MC2013-1 and CP2013-1) is added to the competitive product list as a new product under Negotiated Service

Agreements, Domestic. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

2. The Postal Service shall notify the Commission if the instant contract ends prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the Agreement.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-1 and CP2013-1. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Express Mail & Priority Mail Contract 11

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